

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel, :
Relator, : CASE NO. 2007-0733
BOARD NO. 05-076
v. :
William Mark Fumich, Jr., :
Respondent. :

RELATOR'S OBJECTIONS TO THE FINDINGS
OF FACT, CONCLUSIONS OF LAW AND THE RECOMMENDATION
OF THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE
OF THE SUPREME COURT OF OHIO

JONATHAN E. COUGHLAN (0026424)
Disciplinary Counsel

Ronald L. House (0036752)
C. David Paragas (0043908)
Counsel for Respondent
Benesch, Friedlander, Coplan &
Aronoff LLP
41 South High Street, 26th Floor,
Columbus, OH 43215-3506

PHILIP A. KING (0071895)
Assistant Disciplinary Counsel
Counsel of Record
Office of Disciplinary Counsel of
The Supreme Court of Ohio
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411
Telephone (614) 461-0256

William Mark Fumich, Jr.
Respondent

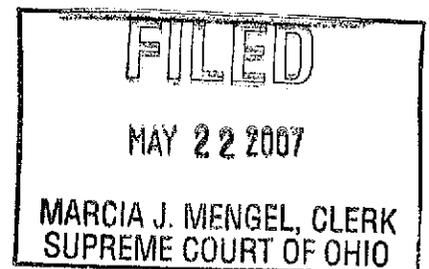


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William Mark Fumich, Jr.	:	Relator's Objections
	:	to the Board of
Respondent.	:	Commissioners
	:	Findings of Fact and
	:	Conclusions of Law
	:	and Brief in Support
	:	

Now comes relator, Disciplinary Counsel, and hereby submits objections to the Final Report of the Board of Commissioners on Grievances and Discipline (the "board") filed with the court on May 2, 2007. A copy of the Final Report ("Report") is attached as Exhibit A.

INTRODUCTION

A two-count amended complaint was filed against Respondent, William Mark Fumich, on June 15, 2006. The first count alleges that respondent deceived his clients by failing to tell them that their case was dismissed due to his failure to respond to a dispositive motion, then paying his client \$16,000 of his own personal funds when she asked him to settle the case. The second count alleges that respondent failed to return documents or the file of Kathleen Nuebig upon her request. Respondent filed his answer to the amended complaint on July 26, 2006.

A panel heard this matter on February 22, 2007. Before the hearing, relator and respondent stipulated that he violated DR 1-102(A)(4), DR 1-102(A)(6), DR 6-101(A)(3),

and DR 9-102(A) under count one, and DR 9-102(B)(4) under count two. But the parties were unable to agree on the appropriate sanction. Relator, unable to ignore respondent's purposeful acts to conceal his deception and that the deception continued for years, argued that an actual suspension is in order. Relator recommended a sanction of a twelve-month suspension with six months stayed. Respondent agreed that a twelve-month suspension was appropriate, but disagreed that he should actually serve any portion of the suspension. He requested the entire twelve-month period stayed.

Following the hearing, the Board on Commissioners on Grievances and Discipline issued its recommendation on April 13, 2007. The board found that respondent violated all five disciplinary rules, including DR 1-102(A)(4) for failing to inform his client that the case was dismissed, then paying his client \$16,000 of his personal funds when she asked him to settle the case. For these violations, the board recommended that respondent serve a twelve-month stayed suspension largely on its finding that respondent lacked a dishonest or selfish motive that warranted an actual suspension.

But the board's recommendation to stay the entire suspension period is inappropriate in this case, and the reason is three-fold. *One*, the mitigation factors the board identifies do not warrant a departure from the ordinary rule that DR-1-102(A)(4) violations require an actual suspension from the practice of law. *Two*, contrary to the board's finding, respondent did act with selfish motives on three occasions that warrant an actual suspension from the practice of law. *And three*, the board's recommendation of a twelve-month stayed suspension is not an appropriate sanction for respondent's

conduct in this matter in light of the Supreme Court's decision in *Disciplinary Counsel v. Manning* (2006), 111 Ohio St. 3d 349; 2006 Ohio 5794; 856 N.E.2d 259. For these three reasons explained below, relator objects to the board's recommendation that the entire twelve-month suspension be stayed and requests that respondent be suspended from the practice of law for twelve months with six months stayed.

STATEMENT OF FACTS RELEVANT TO THIS CASE

Respondent was admitted to the practice of law in the state of Ohio on November 19, 1976. (Report at 1; Stip. at ¶1). Respondent is subject to the Code of Professional Responsibility and the Rules for the Government of the Bar of Ohio. (Stip. at ¶1). Respondent is currently practicing law as a sole practitioner in Westlake, Ohio. (Stip. at ¶2). The following facts are relevant to each of the two counts.

COUNT I – THE ESTATE OF JANKO KLEPAC

Janko Klepac, now deceased, was a relative of respondent's, and Nada Bukszar and Danica ("Donna") Jelovic are Mr. Klepac's daughters. (Stip. at ¶3). In February 1980, respondent began representing Mr. Klepac, including preparing estate planning documents for him. (Stip. at ¶4). Contrary to the board's finding, respondent was paid \$2457.58 for legal services in connection with probating Mr. Klepac's estate. (Stip. at Exs. 17-19). Respondent drafted a will and a trust for Ms. Bukszar and her husband and a will for Ms. Jelovic and her husband. (Stip. at ¶5).

Mr. Klepac passed away in June 1998 at the age of 76. (Report at 2; Stip. at ¶6). The cause of death identified on the death certificate is congestive heart failure. (*Id.*).

Ms. Bukszar was named as the executor of Mr. Klepac's estate. (Stip. at ¶9). Ms. Bukszar and Ms. Jelovic asked respondent to review the circumstances that led to the amputation of Mr. Klepac's toe prior to his death. (Report at 2; Stip. at ¶11). Respondent agreed to review the matter. (Stip. at ¶12). At the end of 1998 or early in 1999, respondent agreed to pursue a medical malpractice action on behalf of the estate as a result of circumstances that led to the amputation of one of Mr. Klepac's toes. (Report at 2; Stip. at ¶13).

Respondent asserts that he discussed the terms of the representation with Ms. Bukszar and Ms. Jelovic, and he asserts that they agreed to pay him a contingent fee of one-third of any recovery and to pay all expenses of the action. (Stip. at ¶14). The fee agreement was never reduced to writing. (Stip. at ¶15).

On March 22, 1999, respondent filed a medical malpractice action in the Cuyahoga County Court of Common Pleas on behalf of the Estate of Janko Klepac against Metrohealth Medical Center ("Metro"), St. Vincent Charity Hospital ("St. Vincent"), and Grace Hospital ("Grace"), seeking \$500,000 in damages. (Report at 2; Stip. at ¶16). A case management conference was held on June 29, 1999, and as a result of the case management conference, respondent was required to submit an expert witness report by November 30, 1999. (Report at 2; Stip. at ¶17). Respondent had difficulty finding an expert witness to establish causation of death and the standard of care on the medical malpractice claim. (Report at 2; Stip. at ¶19).

On February 17, 2000, respondent filed a voluntary dismissal of the action on behalf of the estate, and the case was dismissed without prejudice on February 25, 2000. (Stip. at ¶20). Respondent re-filed the case in the Cuyahoga County Court of

Common Pleas on February 20, 2001, with identical claims and identical parties. (Stip. at ¶21). Respondent continued to have difficulty retaining an expert witness to establish causation of death and the standard of care. (Stip. at ¶22). Respondent filed a Stipulation of Voluntary Dismissal of St. Vincent on September 25, 2001. (Stip. at ¶24). Respondent was unable to find an expert witness to establish causation of death, so he did not file an expert witness report within the deadline. (Stip. at ¶25).

Metro and Grace filed for summary judgment. (Report at 2; Stip. at ¶26). Respondent did not file any response to the summary judgment motions. (Report at 2; Stip. at ¶27). The court granted both summary judgment motions, and the case was dismissed as of February 12, 2002. (Report at 2; Stip. at ¶28).

Respondent took no further action in the case. (Stip. at ¶29). Thereafter, respondent would see Ms. Bukszar and Ms. Jelovic at family functions, and he continued to represent Ms. Jelovic's husband in business matters. (Stip. at ¶31). But respondent did not inform Ms. Bukszar or Ms. Jelovic that the case was dismissed. (Report at 2; Stip. at ¶30). In May 2004, Ms. Jelovic telephoned respondent to inquire about the status of the case. (Stip. at ¶32). Again, respondent did not inform Ms. Jelovic that the case had been dismissed two years earlier in February 2002. (Stip. at ¶33). On Friday, June 4, 2004, Ms. Jelovic telephoned respondent indicating that she wanted the medical malpractice case settled by June 11, 2004 for \$25,000. (Report at 2; Stip. at ¶34). Respondent did not inform Ms. Jelovic that the case had been dismissed. (Stip. at ¶35). Respondent told Ms. Jelovic that he could settle the case for \$16,000. (Report at 2).

After Ms. Jelovic indicated that the \$16,000 offer was acceptable, on Friday, June 11, 2004, respondent withdrew \$16,000 from his personal account at Merrill Lynch. (Report at 2 and Stip. at ¶36). Respondent then deposited the \$16,000 into his IOLTA account at National City Bank. (Report at 3; Stip. at ¶37). On Friday, June 11, 2004, respondent met Ms. Jelovic at her work and gave her a check from his IOLTA account made payable to Donna Jelovic for \$16,000. (Report at 2 and Stip. at ¶¶39-40). Respondent ran the \$16,000 through his IOLTA account because he wanted the money to be paid to Ms. Jelovic on an "attorney check." (Stip. at ¶38). Ms. Jelovic accepted the check. (Stip. at ¶41). Respondent then had Ms. Jelovic sign a form authorizing him to close the file in the medical malpractice case and destroy the file in seven years. (Report at 3; Stip. at ¶44 and Ex. 3). Ms. Jelovic cashed the \$16,000 check and gave half to her sister Ms. Bukszar. (Report at 3). Respondent never informed Ms. Jelovic or Ms. Bukszar that the case had been dismissed or that the money that respondent gave Ms. Jelovic was from his personal funds. (Report at 3; Stip. at ¶¶42-43).

COUNT II – NEUBIG

Respondent represented his uncle Nelson Neubig and his daughter, Kathleen Neubig. (Report at 3). Respondent and Kathleen Neubig possessed a power of attorney for Nelson Neubig. (*Id.*). Kathleen Neubig gave respondent an affidavit signed by her and Nelson Neubig requesting that respondent return their files and documents. (Transcript at 148). Respondent believed that if he provided Kathleen access to certain documents concerning her father, she would misuse the information. (Report at 3). For

this reason, Respondent refused to return documents or the file of Kathleen Nuebig as she requested. (Transcript at 149-150).

RELATOR'S OBJECTIONS

I. **THE MITIGATION FACTORS THE BOARD IDENTIFIES DO NOT WARRANT A DEPARTURE FROM THE ORDINARY RULE THAT DR-1-102(A)(4) VIOLATIONS REQUIRE AN ACTUAL SUSPENSION FROM THE PRACTICE OF LAW.**

In Ohio, the ordinary rule is that when an attorney engages in a course of conduct that violates DR 1-102(A)(4), the attorney will be **actually suspended** from the practice of law for an appropriate period of time. See *Disciplinary Counsel v. Beeler* (2005), 105 Ohio St.3d 188, 2005 Ohio 1143, 824 N.E.2d 78; *Disciplinary Counsel v. Fowerbaugh* (1995), 74 Ohio St.3d 187, 191, 1995 Ohio 261, 658 N.E.2d 237 (Emphasis added). An attorney is "actually suspended" when he or she receives a suspension that is not entirely stayed. See e.g. *Muskingum County Certified Griev. Comm. v. Greenberger* (2006), 108 Ohio St. 3d 258; 2006 Ohio 790; 842 N.E.2d 1042. Moreover, an actual suspension is particularly appropriate when an attorney's dishonesty has been directed toward a client. The Supreme Court has held that "[d]ishonesty toward a client, whose interests are the attorney's duty to protect, is reprehensible." *Disciplinary Counsel v. King* (1996), 74 Ohio St.3d 612, 614, 1996 Ohio 238, 660 N.E.2d 1160 (quoting *Lake Cty. Bar Assn. v. Speros* (1995), 73 Ohio St.3d 101, 104, 1995 Ohio 205, 652 N.E.2d 681).

As stipulated under count one of the amended complaint, respondent deceived his clients by failing to tell them that their case was dismissed due to his failure to

respond to a dispositive motion, then paying his client, Ms. Jelovic, \$16,000 of his own personal funds when she asked him to settle the case. (Stip. at 4-5). Accordingly, the board found that respondent violated DR 1-102(A)(4). Despite this, the board recommends a stayed suspension in lieu of an actual suspension. The board concludes that the following mitigating factors warrant an exception of the actual suspension rule: 1) absence of prior disciplinary record, 2) acknowledgement of wrongful conduct, 3) restitution to the Estate of Janko Klepac, 4) full cooperation in disciplinary proceedings, 5) generally excellent character, 6) absence of a dishonest or selfish motive relative to personal financial gain, and 7) absence of financial harm to clients. (Report at 4).

But the Supreme Court has found mitigating factors similar to those noted by the board in this case insufficient to warrant a departure from the actual suspension rule in cases where the attorney deceived a client. Specifically, in *Disciplinary Counsel v. Rooney* (2006), 110 Ohio St. 3d 349, 351, 2006 Ohio 4576; 853 N.E.2d 663, the board had recommended a six-month stayed sanction for a DR 1-102(A)(4) violation involving a client. In rejecting the board's recommendation to stay the entire suspension, the Supreme Court acknowledged the following mitigating factors noted by the board: 1) the absence of a prior disciplinary record, 2) the absence of a dishonest or selfish motive, 3) a timely and good-faith effort to provide restitution or to rectify the consequences of the misconduct, 4) the respondent's full and free disclosure to the board and his cooperative attitude toward the disciplinary process, and 5) respondent's good character. *Id.* Considering this list of mitigating factors, the Court concluded that these factors do not warrant a departure from the ordinary rule that an actual suspension should be imposed

for dishonest conduct, particularly when that conduct is designed to "mislead a court or client." *Id.*

Similar to *Rooney*, the board found that respondent violated DR 1-102(A)(4) for misleading his client. The board also finds in mitigation that respondent lacked a prior disciplinary record and a dishonest or selfish motive, that respondent made restitution to the client, that respondent fully cooperated with the disciplinary proceedings, and that respondent has a good character. Clearly, the mitigating factors in this case are similar in nature to the mitigating factors considered in *Rooney* – factors that the Supreme Court found do not warrant a departure from the ordinary rule that an actual suspension. Accordingly, the Court should reject the board's recommended sanction to stay the twelve-month suspension. Rather, the Court should suspend respondent for twelve months with six months stayed.

II. CONTRARY TO THE BOARD'S FINDING, RESPONDENT DID ACT WITH A DISHONEST OR SELFISH MOTIVE, WHICH WARRANTS AN ACTUAL SUSPENSION FROM THE PRACTICE OF LAW.

In its sanction recommendation, the board initially states that the "rule violation which would ordinarily cause this panel to embrace the [actual suspension] recommendation of Relator is one involving DR 1-102(A)(4)." (Report at 4). But the board concludes that "the dishonesty and selfish motive found in cases where an actual suspension was imposed, [is] noticeably lacking here." *Id.* So it would seem that the board's recommendation to stay the entire suspension is based on the conclusion that respondent acted without a dishonest or selfish motive. But as the following explains, this conclusion is against the weight of the evidence presented at the hearing.

To begin, it is important to note that the board misstates the actual language of the mitigating factor under BCGD Proc. Reg. 10(B)(2)(b). In its Final Report, the board states that there is an “absence of a dishonest or selfish motive relative to personal **financial gain**” taking the narrow view that the attorney’s motive must be related to financial gain. (Report at 4)(emphasis added). But the Supreme Court has embraced a boarder view of BCGD Proc. Reg. 10(B)(2)(b) recognizing that an attorney’s dishonest or selfish motive may be wholly unrelated to personal financial gain.

The Supreme Court addresses this very issue in *Disciplinary Counsel v. King* (2004), 103 Ohio St. 3d 438; 2004 Ohio 5470; 816 N.E.2d 1040. In *King*, the respondent failed to tell his client that her case was dismissed due to respondent’s failure to file a response to defendant’s summary judgment motion. 103 Ohio St. 3d at 438 P7-8. Respondent had nothing to gain financially by not informing his client but failed to do so because he was embarrassed. *Id.* at P28. In support of a more lenient sanction, the board noted respondent’s “altruistic desire to assist clients with significant legal problems.” But the Supreme Court found respondent’s initial noble intentions undone by respondent’s subsequent failure to advise his client that her case was dismissed due to his embarrassment. *Id.* The Supreme Court found that by succumbing to his personal difficulty, respondent placed his own interests above his client’s, and thus possessed a dishonest or selfish motive – one unrelated to financial gain. *See id.*

In this case, respondent is similarly reluctant to admit that he had a selfish motive and insisted that his conduct towards Ms. Jelovic was motivated by the family’s need for funds, and that his conduct toward Kathleen Neubig was motivated by his desire to

protect Nelson Nuebig. (Transcript at 64 and 126-129). But despite his altruistic claims, respondent's selfish motive is clearly demonstrated on at least three occasions when the respondent's own interest or that of another client caused him to act contrary to his clients' interests.

A. First, The Evidence Shows That Respondent Acted With A Selfish Motive When He Paid His Clients \$16,000, Instead Of Informing His Clients That Their Case Was Dismissed Due To His Personal Difficulty In Delivering The Bad News.

At the hearing, respondent testified as follows.

Q. With regard to the motivation behind giving the check, was there any concern that you were responsible for what had happened?

A. For always with family you're going to feel far worse and far better with a bad result and with a good result. You share pain and you share joy. So if you're asking specifically with regard to this case, the pain of not being able to find the key was difficult.

Q. Have you ever paid this amount of money to any of your clients?

A. From my personal funds, no. Yes, I've paid that and more to clients on successful cases.

Q. You've never done this?

A. No. Nor would I ever do it again.

Q. You went two years without telling them, although you had the opportunity to do so, so I imagine this was a very uncomfortable situation for you?

A. Very uncomfortable.

Q. Now, given that, was it a possibility that there might be some malpractice liability, is that something that you've thought about?

A. No, I don't think so. No. The honest answer is the disappointment.

Q. On whose part?

A. Both, mine and theirs, because we both believed that Grace Hospital and Metro should have done more.

- Q. I appreciate what they could have done. We're just talking about what you could have done.
- A. I felt that badly, too.
- Q. Could you have explained to them that, "I feel badly because you don't have a case that's meritorious but, here, I'm giving you \$16,000 of my personal money," you didn't do that, correct?
- A. I should have, first of all, been upright and straightforward with them and given them the answer contemporaneous with what was going on. There is no doubt, Mr. King. If I felt that in any way, shape, or form that they could benefit by having some money, that's why families help out. I'm not trying to be evasive to your question. I'm just telling you that the family issue is what was important and it was important because of the disappointment. Because clearly, clearly I am still convinced that Grace Hospital didn't chart this and they didn't chart it because they knew it was a problem. They performed wrong procedures once they found it. And when you feel that strongly about the situation, how do you go tell any client, moreover, a family member, that your senses are correct, you've got bad treatment but you can't get a result.
- Q. Have you ever had to tell a client bad news, difficult news?
- A. Yes.
- Q. Does the fact that it's difficult excuse that behavior?
- A. Never.
- Q. You're not saying that because it was difficult what you did was correct?
- A. No.
- Q. It might be more difficult because they're a family member, but the bottom line is you should have and you did not?
- A. Correct. With deepest regret, I didn't go to them and tell them. They should have been told, and I knew they should have been told.
- Q. Would you agree that by giving them the check, not saying anything, that that continued the belief that the case had settled and that the case was over as the result of that?

- A. And I can't put myself into their position, but an objective observer may come to that conclusion.
- Q. You were aware of that, correct?
- A. I just indicated that.
- Q. This made it easier on everyone, including yourself?
- A. No doubt that it made it easier for them, no doubt it had some aspect of making it easier for me.

(Transcript at 60-63). It is clear from respondent's testimony that he faced what he considered a very uncomfortable situation – telling his clients, who were relatives, that their case was dismissed due to his failure to file a response. He stated that he felt “badly” about what happened. So respondent paid his clients \$16,000 to satisfy their alleged need for funds. *Id.* at 64. But after this initial purported altruistic motive was satisfied, respondent's misconduct continued. Specifically, he chose not to tell his client that the case was dismissed. There were no external obstacles that prevented respondent from telling his clients about the dismissal. In fact, Respondent admitted that he could and should have made the disclosure but chose to give his clients \$16,000 instead. Respondent also admitted that giving his clients \$16,000 without saying anything made it easier for him as well. Relator asserts that, like *King*, any initial noble act by respondent was undone by his subsequent failure to inform his client due to his cowardice and/or embarrassment in acknowledging the dismissal. Like *King*, the fact that respondent's initial decision might have been altruistic, it does not thereby insulate respondent from consequences of any misconduct he committed thereafter. 103 Ohio St. 3d at 438, P28. Succumbing to his personal difficulty in informing his client,

respondent placed his own interests above his client's. Therefore, contrary to the board's finding, respondent did act with a selfish motive.

B. Second, The Evidence Shows That Respondent Acted With A Selfish Motive When He Made His Client, Ms. Jelovic, Sign An Acknowledgment Form Closing The Case.

At the hearing, respondent testified to the following facts. Contemporaneous with the \$16,000 check presented on June 11, 2004, respondent had his client, Ms. Jelovic, execute a form authorizing him to close and eventually destroy her case file. (Transcript at 56-57). Respondent acknowledged that this form was usually executed within two months of the conclusion of a case. (*Id.* at 57-58). He also admitted that he had asked Ms. Jelovic to execute this form two years after her case had been dismissed when he could have done so earlier. (*Id.*). Respondent also admitted that the authorization form was not something that he would have in hand, so he purposefully brought it to the meeting for Ms. Jelovic to sign. (*Id.*).

But the execution of this form, two years after the dismissal and contemporaneous with the \$16,000 check, is obviously unrelated to any altruistic motive to satisfy Ms. Jelovic's need of funds. Rather, Ms. Jelovic's execution of the form accomplished two things: 1) it furthered Ms. Jelovic's belief that the case was settled, and 2) it authorized respondent to destroy the case file as evidence of his misconduct in the case. These results relate to respondent's interest, not his client's. This deceptive act was intended to further respondent's interest over that of his client's interest in knowing the outcome of her case. Therefore, contrary to the board's finding, respondent again acted with a selfish motive.

C. Third, The Evidence Shows That Respondent Acted With A Selfish Motive When He Placed His Sense Of Obligation To One Client, Nelson Nuebig, Over His Other Client, Kathleen Nuebig, Who Requested The Return Of Her Records.

It is important to note that a selfish motive finding under BCGD Proc. Reg. 10(B)(2)(b) is not limited to instances where the attorney acts in his own interests. Rather, the Supreme Court has found that an attorney acts with a selfish motive when the attorney sacrifices his or her duty to one client in order to protect the interests of another client. See, *Akron Bar Ass'n v. Holder* (2004), 102 Ohio St. 3d 307; 2004 Ohio 2835; 810 N.E.2d 426, P33 and P42.

The evidence in this case unequivocally shows that respondent sacrificed his duty to return documents to his client, Kathleen Nuebig, for the interest of his preferred client, Nelson Nuebig. Here, respondent represented his uncle Nelson Neubig and his daughter, Kathleen Neubig. (Report at 3). Respondent and Kathleen Neubig possessed a power of attorney for Nelson Neubig. (*Id.*). Kathleen Neubig gave respondent an affidavit signed by her and Nelson Neubig requesting that respondent return their files and documents. (Transcript at 148). Respondent believed that if he provided Kathleen access to certain documents concerning her father, she would use the information to her father and family's disadvantage. (Report at 3; Transcript at 126-129). So to further the interest of his favored client, Nelson Neubig, over the interest of his disfavored client, Kathleen Nuebig, respondent refused to return documents or the file of Kathleen Nuebig as she requested. (Transcript at 149-150). Therefore, contrary to the board's finding, respondent trice acted with a selfish motive.

III. THE BOARD'S RECOMMENDATION OF A TWELVE-MONTH STAYED SUSPENSION IS NOT AN APPROPRIATE SANCTION FOR RESPONDENT'S CONDUCT IN THIS MATTER IN LIGHT OF THE SUPREME COURT'S DECISION IN *DISCIPLINARY COUNSEL V. MANNING*.

In *Disciplinary Counsel v. Manning* (2006), 111 Ohio St. 3d 349; 2006 Ohio 5794; 856 N.E.2d 259, the Supreme Court addressed the appropriate sanction for a DR 1-102(A)(4) violation where the attorney fabricates a settlement to deceive his client. In *Manning*, the attorney promised to file a case on behalf of his clients but failed to do so. When asked if he had filed the case, the attorney falsely said he did. 111 Ohio St. 3d at 349-350. The attorney also falsely told his clients that he received settlement offers. After three years of lying to his clients, the attorney advised his clients to settle the case knowing that there was no case to settle. *Id.* at 350. The attorney then had his clients sign a fabricated settlement agreement for \$47,500. *Id.* He then made an initial payment of \$5221.14 to his clients from his IOLTA account. *Id.* After the attorney was confronted with his deception, he admitted that he did not file the lawsuit and had fabricated the settlement. *Id.*

For this misconduct, the board found that the attorney had violated several rule violations, including DR 1-102(A)(4). *Id.* at 351. In determining the appropriate sanction, the board found that the attorney had a dishonest motive and pattern of misconduct, but he had no prior discipline, made a full disclosure, and was cooperative. He submitted letters attesting to his professionalism and good character. *Id.* The board concluded that the number and intricacy of his lies to his clients, the period when he misled them, and his large number of ethical violations justified a two-year suspension. *Id.* at 352.

Similar to *Manning*, respondent has engaged in a pattern of deception over two years misleading his clients into believing that he had settled their case when it did not exist. Here respondent purposefully did not file any response to the summary judgment motions on his clients' behalf causing the dismissal of their case. (Report at 2; Stip. at ¶¶28). Thereafter, respondent would see his clients at family functions, but deliberately failed to tell them that the case was dismissed although he had plenty of opportunity. (Report at 2; Stip. at ¶¶30 and 31). Again, respondent failed to tell his client, Ms. Jelovic, that the case had been dismissed two years earlier in February 2002, when she telephoned respondent to inquire about the status of the case in May 2004. (Stip. at ¶¶32 and 33). Respondent also did not tell Ms. Jelovic that the case had been dismissed when she telephoned respondent on Friday, June 4, 2004, and indicating that she wanted the medical malpractice case settled. (Stip. at ¶¶34 and 35). In fact, respondent falsely indicated to Ms. Jelovic that he could settle the case for \$16,000. (Report at 2). To facilitate his lie, on Friday, June 11, 2004, respondent withdrew \$16,000 from his personal account at Merrill Lynch and deposited the \$16,000 into his IOLTA account at National City Bank. (Report at 2-3; Stip. at ¶¶36-37). On Friday, June 11, 2004, respondent met Ms. Jelovic at her work and gave her a check from his IOLTA account made payable to Donna Jelovic for \$16,000. (Report at 2 and Stip. at ¶¶39-40). To complete the deception, Respondent then had Ms. Jelovic sign a form authorizing him to close the file in the medical malpractice case and destroy the file in seven years. (Report at 3; Stip. at ¶44 and Ex. 3). As in *Manning*, respondent never informed Ms. Jelovic or Ms. Bukszar that the case had been dismissed or that the

money that respondent gave Ms. Jelovic was from his personal funds and would not have done so if not discovered. (Report at 3; Stip. at ¶¶42-43).

Because this case involves the deception of a client through the fabrication of a settlement in a non-existent case, the *Manning* precedent is most analogous to the instant case and should guide the Court's decision concerning the appropriate sanction – precedent that calls for a more severe sanction than the twelve-month stayed sanction recommended by the board.

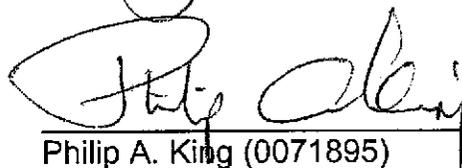
CONCLUSION

In sum, the evidence in this case shows the following: *one*, the mitigation factors the board identifies do not warrant a departure from the ordinary rule that DR-1-102(A)(4) violations require an actual suspension from the practice of law; *two*, contrary to the board's finding, respondent did act with selfish motives on three occasions that warrant an actual suspension from the practice of law; *and three*, the board's recommendation of a twelve-month stayed suspension is not an appropriate sanction for respondent's conduct in this matter in light of the Supreme Court's decision in *Disciplinary Counsel v. Manning*. For these reasons, relator objects to the board's recommendation that the entire twelve-month suspension be stayed and requests that respondent be suspended from the practice of law for twelve months with six months stayed.

Respectfully submitted,



Jonathan E. Coughlan (0026424)
Disciplinary Counsel

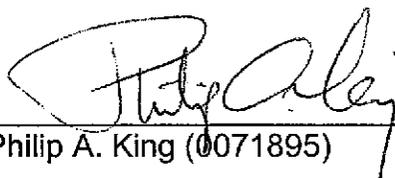


Philip A. King (0071895)
Assistant Disciplinary Counsel
Counsel of Record

250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411
614.461.0256

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Objection has been served upon the Board of Commissioners on Grievances and Discipline, c/o Jonathan W. Marshall, Secretary, 65 South Front Street, 5th Floor, Columbus, Ohio 43215-3431, and respondent's counsel Ronald L. House, Esq. and C. David Paragas, Esq. at Benesch, Friedlander, Coplan & Aronoff LLP, 41 South High Street, 26th Floor, Columbus, Ohio 43215-3506, via regular U.S. mail, postage prepaid, on May 22, 2007.

A handwritten signature in black ink, appearing to read "Philip A. King", is written over a horizontal line. The signature is cursive and somewhat stylized.

Philip A. King (0071895)

**BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO**

IN RE: :

Complaint against : **Case No. 05-076**

William Mark Fumich, Jr. : **Findings of Fact,**
Atty. Reg. No. 0022600 : **Conclusions of Law and**
: **Recommendation of the**
Respondent : **Board of Commissioners on**
Disciplinary Counsel, : **Grievances and Discipline of**
: **the Supreme Court of Ohio**

Relator :

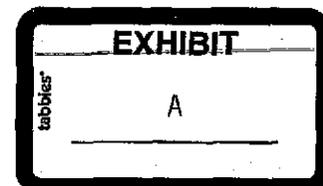
INTRODUCTION

This matter came on for hearing on the 22nd day of February, 2007, at the courthouse of the Ohio Seventh District Court of Appeals in Youngstown, Ohio. The hearing panel representing the Board of Commissioners consisted of John Siegenthaler, Martha Butler and Judge Joseph J. Vukovich, Panel Chair. Relator was represented by Attorneys Jonathan Coughlin and Phillip King. Respondent was present and was represented by Attorneys Ronald House and C. David Paragas. At the hearing, the parties jointly submitted stipulations of fact, violations of the Code of Professional Responsibility, and factors of mitigation as contemplated by BCGD Proc. 10(B). Said stipulations are attached hereto as Exhibit A. Based upon the aforementioned stipulations and the evidence adduced at the hearing, the panel makes the findings hereinafter set forth.

FINDINGS OF FACT

1. Respondent has been practicing law since November 19, 1976.
2. Prior to the matters before the panel, Respondent has never been the subject of disciplinary proceedings.
3. In both counts of the complaint, Respondent was legal counsel for relatives.

COUNT ONE



4. Respondent was initially consulted to represent the family of Janko Klepac, deceased, to probate his last will and testament and his estate.

5. Subsequently, Respondent was asked to review the circumstances of the amputation of Mr. Klepac's toe prior to his death.

6. Mr. Klepac was a diabetic and had died of congestive heart failure.

7. While providing legal counsel to the estate of Mr. Klepac, Respondent agreed to pursue a medical malpractice action on behalf of the estate concerning the aforementioned amputated toe which allegedly occurred due to negligent post-operative care.

8. Respondent timely initiated the malpractice action.

9. Pursuant to a case management order of the court where the malpractice action was pending, the estate was ordered to submit a report of an expert showing the purported negligence in post-operative care.

10. Despite his efforts to locate and/or secure an expert witness (see, e.g. Exhibit 4, "Pre-bill worksheet," attached to the stipulations of the parties) Respondent was unable to locate an expert witness willing to testify on behalf of the estate.

11. The defendants to the malpractice action filed for, and obtained, a summary judgment.

12. Respondent did not respond to the motions for summary judgment which resulted in the dismissal of the estate's complaint on February 12, 2002.

13. Respondent never advised his clients of his inability to secure an expert witness or that the action had been dismissed.

14. In May and June, 2004, one of Respondent's clients was pressuring him to settle the malpractice case for \$25,000, being unaware that the action had been terminated over two years earlier.

15. Instead of telling the family of the deceased the truth of the matter, Respondent met with one of the daughters of the deceased (Ms. Jelovic, the other daughter being the executrix of the estate, Ms. Bukszar) and told her he could settle the case for \$16,000.

16. Upon being advised that the \$16,000 "offer" was acceptable, Respondent, in the presence of Ms. Jelovic, obtained a blank check from his IOLTA account and drafted a \$16,000 check payable to "Donna Jelovic."

17. Contemporaneous with the aforementioned transaction, Ms. Jelovic executed a form authorizing Respondent to close his file on the malpractice case.

18. Ms. Jelović cashed the check from Respondent's IOLTA account and gave one-half to her sister, Ms. Bukszar, the executrix of the estate of Janko Klepac.

19. The source of the \$16,000 paid to Ms. Jelovic was from the personal funds of Respondent, i.e. his Merrill Lynch account. (See stipulations 36-38.)

20. Neither Ms. Jelovic nor Ms. Bukszar was advised by Respondent or were aware that the malpractice action of their father's estate was in fact dismissed for over two years, or that the money they received was from Respondent's personal funds.

21. Respondent never charged the estate, or filed a request for payment, or received any payment for the probate work he performed, or for the work he performed in the malpractice action.

COUNT TWO

22. Paragraph 49 through 63 of the stipulations of the parties attached hereto are incorporated by reference as if fully rewritten.

23. In summation, Respondent represented his uncle Nelson Neubig and Nelson's daughter, Kathleen Neubig. Respondent and Kathleen Neubig possessed a power of attorney for Nelson Neubig. Respondent believed that if he provided Kathleen access to certain documents of Nelson or pertaining to Nelson's assets, he would violate his obligation to Nelson. In the words of Relator, Respondent represented two clients and took the interest of one over the other. Respondent failed to return documents or the file of Kathleen upon her request or the request of Relator.

CONCLUSIONS OF LAW

The panel finds the admissions and stipulations of Respondent and the evidence adduced to be clear and convincing evidence that Respondent has violated the following Disciplinary Rules:

COUNT ONE

(1) DR 1-102(A)(4). A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(2) DR 1-102(A)(6). A lawyer shall not engage in conduct that adversely reflects upon his fitness to practice law;

(3) DR 6-101(A)(3). A lawyer shall not neglect a legal matter entrusted to him; and

(4) DR 9-102(A). No funds belonging to a lawyer or law firm shall be deposited into the attorney's trust account.

COUNT TWO

(5) DR 9-102(B)(4). A lawyer shall promptly deliver upon request from the client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

AGGRAVATION

The panel finds none of the factors set forth in BCGD Proc. Reg. 10(B)(1)(a-i).

MITIGATION

Pursuant to BCGD Proc. Reg. 10(B)(2)(a-h), the panel finds the following mitigating factors:

(a) Absence of a prior disciplinary record. (Stipulated).

(b) Respondent acknowledges the wrongful nature of his conduct. (Stipulated).

(c) Respondent has made restitution to the Estate of Janko Klepac. (Stipulated).

(d) Respondent has fully cooperated in these proceedings. (Stipulated).

(e) Character or reputation is generally excellent.

(f) Absence of a dishonest or selfish motive relative to personal financial gain. In fact, Respondent lost \$16,000 out of pocket in an effort to appease relatives and performed legal services on their behalf without fees.

(g) Absence of financial harm to his clients.

SANCTION RECOMMENDATION

Relator recommended a sanction of a 12 month suspension with 6 months stayed. Respondent requested a 12 month suspension with all of the suspension stayed. The rule violation which would ordinarily cause this panel to embrace the recommendation of Relator is one involving DR 1-102(A)(4). However, the panel accepted that stipulated violation primarily because Respondent was deceitful to his client. Accordingly, the dishonesty and selfish motive found in cases where an actual suspension was imposed, was noticeably lacking here. Moreover, the absence of any harm to a client (arguably the clients received a benefit from the

conduct of Respondent relative to the tenuous merits of the malpractice case), the good character and reputation of Respondent, his cooperation and clean disciplinary record, necessitate a conclusion that an actual suspension is not a just result under the facts and circumstances of this case. Therefore, the panel recommends that Respondent receive a 12 month suspension, all of it stayed.

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on April 13, 2007. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends that the Respondent, William Mark Fumich, Jr., be suspended from the practice of law in the State of Ohio for a period of one year with the entire one year stayed. The Board further recommends that the cost of these proceedings be taxed to the Respondent in any disciplinary order entered, so that execution may issue.

Pursuant to the order of the Board of Commissioners on Grievances and Discipline of The Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendations as those of the Board.



**JONATHAN W. MARSHALL, Secretary
Board of Commissioners on
Grievances and Discipline of
The Supreme Court of Ohio**

**BEFORE THE BOARD OF COMMISSIONERS
ON GRIEVANCES AND DISCIPLINE OF
THE SUPREME COURT OF OHIO**

In re:

Complaint against

William Mark Fumich, Jr., Esq.
Seeley, Savidge & Ebert
800 Bank One Center, 8th Floor
600 Superior Avenue, East
Cleveland, OH 44114-2655

AGREED STIPULATIONS

Attorney Registration No. (0022600)

BOARD NO. 05-076

Respondent,

FILED

Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411

FEB 23 2007
BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

Relator.

Relator, Disciplinary Counsel, and respondent, William Mark Fumich, do hereby stipulate to the admission of the following facts, the following violations of the Code of Professional Conduct and the authenticity and admission of the attached exhibits.

STIPULATED FACTS

1. Respondent, William Mark Fumich, was admitted to the practice of law in the state of Ohio on November 19, 1976. Respondent is subject to the Code of Professional Responsibility and the Rules for the Government of the Bar of Ohio.
2. Respondent is currently practicing law as a sole practitioner in Westlake, Ohio.

COUNT I – THE ESTATE OF JANKO KLEPAC

3. Janko Klepac, now deceased, was a relative of respondent's, and Nada Bukszar and Danica ("Donna") Jelovic are Mr. Klepac's daughters.
4. In February 1980, respondent began representing Mr. Klepac, including preparing estate planning documents for him.
5. Respondent drafted a will and a trust for Ms. Bukszar and her husband and a will for Ms. Jelovic and her husband.
6. Mr. Klepac passed away in June 1998 at the age of 76. The cause of death identified on the death certificate is congestive heart failure.
7. Shortly after Mr. Klepac's death, Ms. Bukszar and Ms. Jelovic asked respondent to assist in the probate of Mr. Klepac's will.
8. Respondent agreed to the representation, and he filed the estate in the Cuyahoga County Probate Court on November 30, 1998. The estate was assigned case number 1998 EST 0013596.
9. Ms. Bukszar was named as the executor of Mr. Klepac's estate.
10. Respondent never charged the estate or filed a request for payment with the probate court for the work that he performed.
11. Ms. Bukszar and Ms. Jelovic also asked respondent to review the circumstances that led to the amputation of Mr. Klepac's toe prior to his death.
12. Respondent agreed to review the matter.
13. At the end of 1998 or early in 1999, respondent agreed to pursue a medical malpractice action on behalf of the estate as a result of circumstances that led to the amputation of one of Mr. Klepac's toes.

14. Respondent asserts that he discussed the terms of the representation with Ms. Bukszar and Ms. Jelovic, and he asserts that they agreed to pay him a contingent fee of one-third of any recovery and to pay all expenses of the action.
15. The fee agreement was never reduced to writing.
16. On March 22, 1999, respondent filed a medical malpractice action in the Cuyahoga County Court of Common Pleas on behalf of the Estate of Janko Klepac against Metrohealth Medical Center ("Metro"), St. Vincent Charity Hospital ("St. Vincent"), and Grace Hospital ("Grace"), seeking \$500,000 in damages. The case was assigned case number CV-99-380595.
17. A case management conference was held on June 29, 1999, and as a result of the case management conference, respondent was required to submit an expert witness report by November 30, 1999.
18. Respondent was granted an extension to file the expert witness report.
19. Respondent had difficulty finding an expert witness to establish causation of death and the standard of care on the medical malpractice claim. Dr. Alexander, a vascular surgeon, had previously told Ms. Bukszar, Ms. Jelovic and Respondent that he believed that substandard medical care was the cause of Mr. Klepac's gangrenous toe.
20. On February 17, 2000, respondent filed a voluntary dismissal of the action on behalf of the estate, and the case was dismissed without prejudice on February 25, 2000.

21. Respondent re-filed the case in the Cuyahoga County Court of Common Pleas on February 20, 2001, with identical claims and identical parties. The case was assigned case number CV-01-430681.
22. Respondent continued to have difficulty retaining an expert witness to establish causation of death and the standard of care.
23. Dr. Alexander, the vascular surgeon who previously informed Ms. Bukszar, Ms. Jelovic and Respondent that substandard care led to the gangrenous toe, stated that he would not so testify because he was associated with one of the hospitals. Dr. Alexander submitted an affidavit now stating that there was no substandard care.
24. Respondent filed a Stipulation of Voluntary Dismissal of St. Vincent on September 25, 2001.
25. Respondent was not able to find an expert witness to establish causation of death, so he did not file an expert witness report within the deadline.
26. Metro and Grace filed for summary judgment.
27. Respondent did not file any response to the summary judgment motions. Respondent asserts that he did not do so because he had no expert witness to support opposition to the motion.
28. The court granted both summary judgment motions, and the case was dismissed as of February 12, 2002.
29. Respondent took no further action in the case.
30. Respondent never informed Ms. Bukszar or Ms. Jelovic that the case was concluded.

31. Thereafter, respondent would see Ms. Bukszar and Ms. Jelovic at family functions, and he continued to represent Ms. Jelovic's husband in business matters.
32. In May 2004, Ms. Jelovic telephoned respondent to inquire about the status of the case.
33. Respondent did not inform Ms. Jelovic that the case had been dismissed in February 2002.
34. On Friday, June 4, 2004, Ms. Jelovic telephoned respondent. She indicated that she wanted to settle and that she wanted the case settled by June 11, 2004 for \$25,000.
35. Respondent did not inform Ms. Jelovic that the case had been dismissed.
36. On Friday, June 11, 2004, respondent withdrew \$16,000 from his personal account at Merrill Lynch.
37. Respondent then deposited the \$16,000 from his personal Merrill Lynch account into his IOLTA account at National City Bank (account # 2214600).
38. Respondent ran the \$16,000 through his IOLTA account because he wanted the money to be paid to Ms. Jelovic on an "attorney check."
39. Respondent took a check from his IOLTA account and met with Ms. Jelovic at her place of employment on the afternoon of Friday, June 11, 2004.
40. Respondent wrote check #3266 from his IOLTA account to Ms. Jelovic for \$16,000.
41. Ms. Jelovic accepted the check.

42. At their meeting on June 11, 2004, respondent did not inform Ms. Jelovic that the case had been dismissed in February 2002.
43. At their meeting on June 11, 2004, respondent did not inform Ms. Jelovic that the money that he gave her was from his personal funds.
44. After respondent gave Ms. Jelovic the \$16,000 check, he had her sign a form from Seeley, Savidge & Ebert authorizing him to close the file.
45. On Monday, June 14, 2004, when Ms. Jelovic spoke with respondent to ask additional questions about the settlement, he was at the post office attending to the business of a client.
46. Respondent did not have any other conversations with Ms. Jelovic or Ms. Bukszar regarding the case after June 14, 2004.
47. Ms. Jelovic filed the grievance herein on July 16, 2004.
48. Respondent failed to keep Ms. Bukszar and Ms. Jelovic informed about the status of the medical malpractice case.

COUNT II – NEUBIG

49. Nelson Neubig (now deceased) was respondent's uncle, and Kathleen Neubig is a daughter of Nelson Neubig and respondent's first cousin.
50. Respondent represented Mr. Neubig on various legal matters between 1976 and December 2004.
51. Respondent represented Ms. Neubig on several legal matters, including misdemeanor criminal charges and estate planning matters.
52. For many years prior to Mr. Neubig's death on April 6, 2006, he and Ms. Neubig resided together in Chesterland, Geauga County, Ohio.

53. Prior to Mr. Neubig's death, Ms. Neubig was his primary caregiver.
54. On June 19, 2004, Mr. Neubig executed a Power of Attorney authorizing Respondent and Ms. Neubig to act on his behalf.
55. On January 15, 2005, Ms. Neubig sent respondent a letter by certified mail.
56. Respondent received the letter from Ms. Neubig.
57. In February 2005, Ms. Neubig filed a grievance against respondent unrelated to the return of her files.
58. Respondent received a copy of the grievance that Ms. Neubig filed.
59. On May 11, 2005, relator sent respondent a letter of inquiry by certified mail requesting that respondent provide a written response to the allegations raised in the grievance filed by Ms. Neubig.
60. Respondent received the letter from relator, but respondent did not return any documents to Ms. Neubig.
61. The July 26, 2005 letter requested that all of Ms. Neubig's legal documents in respondent's possession be returned.
62. The July 26, 2005 letter was sent to respondent by certified mail.
63. Respondent received the July 26, 2005 letter, but respondent did not return copies any documents to Ms. Neubig.

STIPULATED VIOLATIONS

64. Respondent's conduct as set forth in Count I herein violates the Code of Professional Responsibility: DR 1-102(A)(4) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); DR 1-

102(A)(6) (a lawyer shall not engage in conduct that adversely reflects on his fitness to practice law); DR 6-101(A)(3) (a lawyer shall not neglect a legal matter entrusted to him); and DR 9-102(A) (no funds belonging to a lawyer shall be deposited into the attorney's trust account).

65 Respondent's conduct as set forth in Count II herein violates the Code of Professional Responsibility: DR 9-102(B)(4) (a lawyer shall promptly deliver to the client as requested by the client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive).

STIPULATED MITIGATING FACTORS

Relator and respondent stipulate to the following mitigating factors as listed in BCGD Proc. Reg. § 10(B)(2):

- (a) absence of a prior disciplinary record.
- (b) Respondent acknowledges the wrongful nature of his conduct.
- (c) Respondent has made restitution to the Estate of Janko Klepac.
- (d) Respondent has fully cooperated in these proceedings.

STIPULATED EXHIBITS

1. Check # 3266 dated 6/11/2004 from William Fumich IOLTA account to Donna Jelovic (front and back);
2. Check stub from William Fumich IOLTA in connection with check # 3266;
3. Form entitled "Authorization;"
4. Pre-bill worksheet for Estate of Janko Klepac from Seeley, Savidge & Ebert, Co. LPA;
5. Fax dated 10/9/01 from Seeley, Savidge & Ebert, Co. LPA to Dr. Baird and George Gianakopoulos;
6. Complaint from Cuyahoga County Case # CV 99-380595 Estate of Janko Klepac v. Metrohealth Medical Center, et al;
7. Docket from Cuyahoga County Case # CV 99-380595 Estate of Janko Klepac v. Metrohealth Medical Center, et al;
8. Notice of Dismissal pursuant to Rule 41(A) in # CV 99-380595 Estate of Janko Klepac v. Metrohealth Medical Center, et al;
9. Complaint filed in Cuyahoga County Case # CV 01-430681 Estate of Janko Klepac v. Metrohealth Medical Center, et al;
10. Docket from Cuyahoga County Case # CV 01-430681 Estate of Janko Klepac v. Metrohealth Medical Center, et al;
11. Stipulation of Dismissal of defendant St. Vincent Charity Hospital in Case # 430681, Estate of Janko Klepac v. MetroHealth Medical Center, et al;
12. Journal Entry granting Motion for Summary Judgment on behalf of defendant Grace Hospital in Case # 430681, Estate of Janko Klepac v. MetroHealth Medical Center, et al;
13. Journal Entry granting Motion for Summary Judgment on behalf of defendant Metrohealth Medical Center in Case # 430681, Estate of Janko Klepac v. MetroHealth Medical Center, et al;
14. May 9, 2005 written response of William Fumich to relator's letter of inquiry dated August 3, 2004;
15. June 2004 statement of William Fumich's IOLTA #2214600;

16. June 30, 2005 written response of William Fumich to relator's letter dated June 13, 2005;
17. October 18, 1999 bill for legal services in the "Estate of Janko Klepac" submitted by respondent to Ms. Nada Bukzsar;
18. October 18, 1999 letter from William Fumich to Ms. Nada Bukzsar, re: Estate of Janko Klepac;
19. Copy of October 22, 1999 money order in the amount of \$2,457.58 made out to William Fumich;
20. Docket from the Cuyahoga County Probate Court case # 1998 EST 0013596; decedent Janko Klepac;
21. One page of William Fumich's Merrill Lynch Account showing a withdrawal of \$16,000 on June 11, 2004;
22. January 15, 2005 letter from Nelson R. Neubig and Kathleen Neubig to respondent;
23. June 21, 2005 letter from respondent to relator;
24. January 13, 2006 letter from relator to respondent;
25. March 31, 2006 letter from respondent's counsel to relator;
26. Billing summary for Klepac lawsuit representation
27. Medical Record summary for Klepac lawsuit representation
28. 9/25/01 Plaintiff's Motion for Enlargement of Time to Provide Expert Report in Klepac lawsuit
29. 10/15/01 Affidavit of Jeffrey Alexander, M.D.
30. Character Letters

CONCLUSION

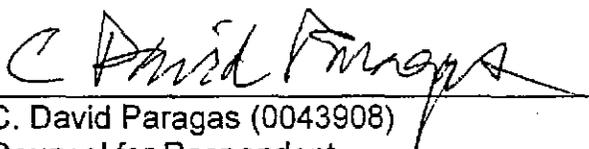
The above are stipulated to and entered into by agreement by the undersigned parties on this 22nd day of February, 2007.



Jonathan E. Coughlan (0026424)
Disciplinary Counsel



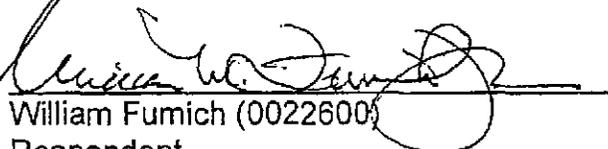
Philip A. King (0071895)
Assistant Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, OH 43215
614-461-0256



C. David Paragas (0043908)
Counsel for Respondent



Ronald L. House (0036752)
Counsel for Respondent
Benesch, Friedlander, Coplan &
Aronoff LLP
88 East Broad Street, Suite 900
Columbus, OH 43215
614-223-9300



William Furnich (0022600)
Respondent
Seeley, Savidge & Ebert
800 Bank One Center, 8th Floor
600 Superior Avenue, East
Cleveland, OH 44114-2655